

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 29 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

TOM AND BRENDA DYER, as parents and)
next friend of their minor daughter, KANDIS)
DYER; TOM AND BRENDA DYER, as parents)
and next friend of their minor daughter,)
TAMARA DYER; ROGER AND VICKI)
WHEELER, as parents and next friend of their)
minor daughter, JILLIAN WHEELER; ROGER)
AND VICKI WHEELER, as parents and next)
friend of their minor daughter, RACHAEL)
WHEELER; GREG AND SHELLY BILLEN)
as parents and next friend of their minor)
daughter, HEATHER BILLEN;)

Plaintiffs,)

v.)

INDEPENDENT SCHOOL DISTRICT)
NO. 38 OF OSAGE COUNTY,)
a/k/a HOMINY PUBLIC SCHOOLS;)
GERALD CHRISTY, individually and in)
his official capacity as Superintendent; and)
Does 1 through 50,)

Defendants.)

99CV0816BU(E)

Case No.

CLASS ACTION COMPLAINT

The above-captioned Plaintiffs, as parents and next friend of their minor daughters, and on behalf of all others similarly situated ("Plaintiffs"), respectfully file this Complaint against Defendants, INDEPENDENT SCHOOL DISTRICT NO. 38 OF OSAGE COUNTY, a/k/a HOMINY PUBLIC SCHOOLS; GERALD CHRISTY, individually and in his official capacity as Superintendent; and Does 1 through 50, and allege as follows:

STATEMENT OF THE CASE

1. This action is posed as a class action for declaratory and injunctive relief brought on behalf of female students at Hominy Public Schools in Hominy, Oklahoma. The named

fees
forms

plaintiffs are also seeking compensatory damages in their individual capacities. Defendants have violated (1) Title IX of the Education Amendment of 1972, 20 U.S.C. §1681 *et seq.* ("Title IX") and the regulations adopted thereto, and (2) the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983, by intentionally denying the female students at Hominy Public Schools (1) an equal opportunity to participate in interscholastic and other school-sponsored athletics and (2) the equal treatment and benefits that must necessarily accompany an equal opportunity to participate.

2. Defendants' denial of equal participation and equal treatment and benefits constitutes intentional discrimination against the named plaintiffs and all members of the class based solely on their gender. Specifically, as to unequal participation opportunities, Defendants have discriminated against female students at Hominy Public Schools in the accommodation of student interests and abilities in athletics by knowingly and intentionally selecting and offering sports and levels of competition in a manner which discriminates against female students. Notwithstanding the significant number of female students at Hominy Public Schools who have the interest and abilities necessary to participate in athletics, Defendants have refused to provide them with an equal opportunity to do so. Furthermore, as to unequal treatment and benefits, Defendants have discriminated against Hominy Public Schools' female students in the following areas: (1) equipment and supplies; (2) scheduling of games and practice times; (3) travel; (4) opportunity to receive qualified coaching; (5) assignment and compensation of coaches; (6) provision of locker rooms and facilities for both practice and competition; (7) provision of medical and training facilities and services; and (8) publicity.

3. This action seeks to redress the deprivation of the named Plaintiffs' rights and the rights of the class to an equal opportunity to participate in interscholastic and other school-sponsored athletics and to receive the equal treatment and benefits which must necessarily accompany an equal opportunity to participate. This action seeks a declaratory judgment that Defendants have violated the rights of Hominy Public Schools' female students under federal law and the United States Constitution. This action further seeks an injunction requiring Defendants to immediately cease their discriminatory practices and to remedy the effects of their discriminatory practices and to remedy the effects of their discriminatory conduct.

4. Plaintiffs seek injunctive relief which, among other things, requires that Defendants sponsor and fund a sufficient number of additional athletic teams for female students to obtain meaningful participation opportunities which are comparable to those offered to male students enrolled at Hominy Public Schools.

5. Plaintiffs further seek injunctive relief which requires that Defendants provide the girls' athletic teams at Hominy Public Schools with equal treatment and benefits as Hominy Public Schools already provides to its boys' athletic teams.

6. The named Plaintiffs, in their capacities as the parents and next friend of their minor daughters, seek monetary relief in order to compensate them for their damages resulting from Defendants' discrimination in its athletics program, including, among other things, (1) the actual out-of-pocket costs incurred in paying for equipment and supplies for their daughters to participate in interscholastic and other school-sponsored athletics which would not be incurred by parents of boys similarly situated, (2) the damages associated with their daughters' lost opportunities to participate in athletics, (3) the damages associated with their daughters' reduced

opportunities to obtain college athletic scholarships, and (4) other damages, physical and emotional, resulting from their daughters' being subjected to discrimination and unequal treatment and benefits in athletics on the basis of gender.

JURISDICTION AND VENUE

7. The first claim arises under 20 U.S.C. §1681, *et seq.* and its interpreting regulations. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4).

8. The second claim also arises under 20 U.S.C. §1681 *et seq.* and its interpreting regulations. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4).

9. The third claim arises under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and 42 U.S.C. §1983. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4).

10. Jurisdiction for declaratory and other relief is invoked pursuant to 28 U.S.C. §§ 2201(a) and 2202.

11. Venue is proper pursuant to 28 U.S.C. §1391(b). These claims arose in Hominy, Oklahoma, which is within the jurisdiction of this Court.

THE PARTIES

12. Plaintiffs Tom and Brenda Dyer are the parents of Kandis Dyer, a 17-year-old 12th grade student at Hominy Public Schools. Kandis is a talented athlete who participates in softball

and basketball. Her opportunities to participate in interscholastic and other school-sponsored athletics are not comparable to the opportunities afforded to boys who are similarly situated. In addition, she has endured the unequal treatment and benefits directed by Hominy Public Schools toward their female athletes. The Dyers are residents of Hominy, Oklahoma, which is within the jurisdiction of this Court.

13. Plaintiffs Tom and Brenda Dyer are the parents of Tamara Dyer, a 14-year-old 9th grade student at Hominy Public Schools. Tamara is a talented athlete who participates in softball and basketball. Her opportunities to participate in interscholastic and other school-sponsored athletics are not comparable to the opportunities afforded to boys who are similarly situated. In addition, she has endured the unequal treatment and benefits directed by Hominy Public Schools toward their female athletes. The Dyers are residents of Hominy, Oklahoma, which is within the jurisdiction of this Court.

14. Plaintiffs Roger and Vicki Wheeler are the parents of Jillian Wheeler, a 17-year-old 12th grade student at Hominy Public Schools. Jillian is a talented athlete who participates in softball. Her opportunities to participate in interscholastic and other school-sponsored athletics are not comparable to the opportunities afforded to boys who are similarly situated. In addition, she has endured the unequal treatment and benefits directed by Hominy Public Schools toward their female athletes. The Wheelers are residents of Hominy, Oklahoma, which is within the jurisdiction of this Court.

15. Plaintiffs Roger and Vicki Wheeler are the parents of Rachael Wheeler, a 14-year-old 9th grade student at Hominy Public Schools. Rachael is a talented athlete who participates in softball, track and basketball. Her opportunities to participate in interscholastic and other

school-sponsored athletics are not comparable to the opportunities afforded to boys who are similarly situated. In addition, she has endured the unequal treatment and benefits directed by Hominy Public Schools toward their female athletes. The Wheelers are residents of Hominy, Oklahoma, which is within the jurisdiction of this Court.

16. Plaintiffs Greg and Shelly Billen are the parents of Heather Billen, a 14-year-old 8th grade student at Hominy Public Schools. Heather is a talented athlete who participates in basketball and track. Her opportunities to participate in interscholastic and other school-sponsored athletics are not comparable to the opportunities afforded to boys who are similarly situated. In addition, she has endured the unequal treatment and benefits directed by Hominy Public Schools toward their female athletes. The Billens are residents of Hominy, Oklahoma, which is within the jurisdiction of this Court.

17. Defendant Independent School District No. 38 of Osage County, a/k/a Hominy Public Schools, is a public school district authorized by 70 Okla. Stat. §1-101 *et seq.* to operate and control Hominy Public Schools, where the Plaintiffs' daughters are students. Therefore, Hominy Public Schools' conduct is considered state action under 42 U.S.C. §1983. Defendant Hominy Public Schools is located in Hominy, Oklahoma, which is within the jurisdiction of this Court. Since the passage of Title IX, Hominy Public Schools has received and continues to receive federal financial assistance and the benefits therefrom. Therefore, all programs at Hominy Public Schools, including athletics, are subject to the requirements of Title IX.

18. Defendant Gerald Christy is the Superintendent of Schools at Hominy Public Schools. Mr. Christy is a resident of the State of Oklahoma and thus is subject to the jurisdiction of this Court.

19. The named Plaintiffs are ignorant of the true names and capacities of Does 1-50, but believe them to be employees of Hominy Public Schools or members of the Hominy Public Schools School Board. Plaintiffs will seek to amend this Complaint to set forth their true names and capacities when they are ascertained. Plaintiffs are informed and believe, and on that basis allege, that each of these fictitiously named defendants is responsible in some manner for the discriminatory actions alleged herein and that each is a resident of the State of Oklahoma and thus is subject to the jurisdiction of this Court.

CLASS ALLEGATIONS

20. The named Plaintiffs bring these claims on behalf of their minor daughters, and, pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, for declaratory and injunctive relief, on behalf of all present and future female students enrolled at Hominy Public Schools who participate, seek to participate, or are deterred from participating in interscholastic and/or other school-sponsored athletics at Hominy Public Schools.

21. Each of the named Plaintiffs' daughters is a student at Hominy Public Schools and is an athlete who is subjected to Hominy Public Schools' unequal treatment and benefits.

22. In bringing this lawsuit, Plaintiffs seek to require Defendants to comply with Title IX and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by ending their discriminatory policies toward the girls' athletics programs in Hominy Public Schools. Accordingly, Plaintiffs seek injunctive relief requiring Hominy Public Schools to fund and sponsor girls' sports so that the interests and abilities of all female students at Hominy Public Schools are accommodated in a non-discriminatory manner. Plaintiffs propose

to represent all female students at Hominy Public Schools who wish to participate in any interscholastic and other school-sponsored athletics that are not funded and sponsored by Hominy Public Schools. In addition, Plaintiffs, whose daughters are currently athletes at Hominy Public Schools, seek declaratory and injunctive relief to remedy discrimination against current and future female athletes at Hominy Public Schools regarding their receipt of treatment and benefits which are not comparable to those received by the male athletes.

23. The class is so numerous that joinder of all members is impractical. It is unknown how many of the current Hominy Public Schools female students or how many future Hominy Public Schools female students would seek to participate in interscholastic or other school-sponsored athletics if additional opportunities were available. Moreover, joinder of all members is impractical because members of the class who may suffer future injury are not capable of being identified at this time.

24. There are many questions of law and fact common to the class, including: (a) whether female students at Hominy Public Schools are being deprived of equal opportunities to participate in interscholastic and other school-sponsored athletics, (b) whether female students at Hominy Public Schools are receiving unequal treatment and benefits in comparison to the male students at Hominy Public Schools, and (c) whether Defendants have been and are discriminating against girls in Hominy Public Schools' interscholastic and other school-sponsored athletic programs in violation of Title IX and the United States Constitution.

25. The claims of the named Plaintiffs are typical of the claims of the class. The types of gender discrimination which Plaintiffs' daughters have suffered as a result of their gender include: (1) exclusion from opportunities to participate in the interscholastic and other school-

sponsored athletic programs at Hominy Public Schools and/or (2) receipt of unequal treatment and benefits in Hominy Public Schools' interscholastic or other school-sponsored athletic programs. These are typical of the types of gender discrimination which members of the class have suffered, are suffering, and, unless this Court grants relief, will continue to suffer.

26. The named Plaintiffs will fairly and adequately represent and protect the interests of the class. Plaintiffs intend to prosecute this action rigorously in order to secure remedies for the entire class.

27. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole.

GENERAL ALLEGATIONS

THE REQUIREMENTS OF TITLE IX

28. Title IX, enacted in 1972, provides in relevant part:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

20 U.S.C. § 1681(a). The Civil Rights Restoration Act of 1987 made Congress' intent plain that "program or activity," as used in Title IX, applies to any program or activity so long as any part of the public institution receives federal financial assistance. 20 U.S.C. § 1687. Thus, Hominy

Public Schools is subject to Title IX even if none of the funding for either its girls' or boys' athletic programs comes specifically from federal sources.

29. In 1975, the Department of Health, Education and Welfare (the predecessor of the United States Department of Education ("DOE")) adopted regulations interpreting Title IX. These regulations are codified at 34 C.F.R. Part 106. (the "Regulations").

30. With regard to athletic programs, § 106.41(a) of 34 C.F.R. provides that interscholastic athletics are included within the "program or activity" requirements of Title IX:

No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient....

31. 34 C.F.R. § 106.41(c) specifies ten (10) factors that are to be considered in the determination of equal athletic opportunity:

1. Whether the selection of sports and levels of competition effectively accommodate the interest and abilities of members of both sexes;
2. The provision of equipment and supplies;
3. Scheduling of games and practice time;
4. Travel and per diem allowance;
5. Opportunity to receive coaching and academic tutoring;
6. Assignment and compensation of coaches and tutors;
7. Provision of locker rooms, practice and competitive facilities;
8. Provision of medical and training facilities and services;

9. Provision of housing and dining facilities and services; and
10. Publicity.

Another factor to be considered is a school's "failure to provide necessary funds for teams for one sex." *Id.*

32. In 1979, the Office of Civil Rights of the Department of Education ("OCR") issued a policy interpretation of Title IX and the Regulations. This policy interpretation is found at 44 Fed. Reg. 71413 (1979) (the "Policy Interpretation").

33. The Policy Interpretation provides that, in order to comply with Title IX and 34 C.F.R. § 106.41(c), schools must provide equal athletic opportunities in three general areas: (1) awarding of scholarships (aimed primarily at problems at the intercollegiate level); (2) participation opportunities (including both the number of opportunities and whether the selection of sports and the level of competition effectively accommodate the interests and abilities of members of both sexes); and (3) treatment and benefits. 44 Fed. Reg. at 71414. Although the scholarship regulations are not at issue in this Complaint, equal participation opportunities and equal treatment and benefits are.

34. According to the Policy Interpretation, compliance in the area of equivalent participation opportunities is to be determined by the following three-part test:

- (1) whether interscholastic and other school-sponsored athletic participation¹ opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
- (2) where the members of one sex have been and are underrepresented among interscholastic and other school-sponsored athletics, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or
- (3) where the members of one sex are underrepresented among interscholastic and other school-sponsored athletics and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program. *See* 44 Fed. Reg. at 71418.

35. Under both the Regulations and the Policy Interpretation, compliance in the area of equal treatment and benefits is assessed based on an overall comparison of the male and female athletic programs, including an analysis of factors (2) through (10) of 34 C.F.R. § 106.41(c) listed above and an analysis of whether the necessary funds are provided for teams of both sexes.

¹Although the Policy Interpretation refers to "intercollegiate" sports, it is applicable to all recipients of federal education funds, including high schools, and is, thus, applicable to interscholastic high school sports as well as intercollegiate sports. 34 C.F.R. § 106.11. *See also*, 44 Fed. Reg. at 71413 which provides that the Policy Interpretation's "general principles will often apply to ... interscholastic athletic programs which are also covered by the Regulations."

36. The Regulations require that sponsors of interscholastic and other school-sponsored athletics (such as Hominy Public Schools) take such remedial actions as are necessary to overcome the effects of gender discrimination in violation of Title IX. *See* 34 C.F.R. § 106.3(a). On information and belief, Hominy Public Schools has not taken any significant recent remedial actions and any remedial actions which Hominy Public Schools has taken in the past twenty-seven (27) years have been insufficient to satisfy Hominy Public Schools' obligations under Title IX.

37. The Regulations further require that sponsors of interscholastic and other school-sponsored athletics comply with the Regulations within three years of their effective date (which was July 21, 1975). Now, more than twenty-four (24) years later, Hominy Public Schools has still not fully complied with Title IX.

THE U.S. CONSTITUTION

38. The Fourteenth Amendment to the United States Constitution requires that a state shall not "deny to any person within its jurisdiction the equal protection of the laws."

39. Under 42 U.S.C. § 1983, Defendants may be held personally liable for their actions in violating Plaintiffs' daughters' rights under the Fourteenth Amendment.

INJUNCTIVE RELIEF

40. Plaintiffs are entitled to injunctive relief to end Defendants' unequal, discriminatory, and unlawful treatment of female student athletes. Because of Defendants' acts and omissions, Plaintiffs' daughters continue to be deprived of the rights guaranteed to them by

the United States Constitution and the laws of the United States. Failure to grant the injunctive relief requested will result in irreparable harm to Plaintiffs' daughters in that Plaintiffs' daughters' Fourteenth Amendment rights will be violated and that Plaintiffs' daughters will never be able to participate in interscholastic and other school-sponsored athletics on an equal basis with their male classmates, if at all. Accordingly, Plaintiffs do not have an adequate remedy at law for this harm. This threatened harm far outweighs any possible harm that granting injunctive relief might cause Defendants. Finally, the injunctive relief sought would in no way disserve the public interest but, on the contrary, would prevent discrimination based on gender and would promote the goal of full equality before the law.

ATTORNEYS' FEES

41. Plaintiffs have been required to retain the undersigned attorneys to prosecute this action. Plaintiffs are entitled to recover reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

FIRST CLAIM FOR RELIEF: TITLE IX

(Unequal Participation Opportunities)

(Class action against Hominy Public Schools only)

42. Plaintiffs reallege and incorporate herein by this reference paragraphs 1 through 41 inclusive of this Complaint.

43. By offering certain opportunities to male students to participate in interscholastic and other school-sponsored athletics, Hominy Public Schools has demonstrated its determination

that athletic opportunities provide educational benefits that should be supported by the school system. Plaintiffs agree with this determination that athletic opportunities provide valuable educational benefits. For this very reason, Plaintiffs contend that their daughters - and all of the female students at Hominy Public Schools - should have equal access and opportunity to receive these same benefits that the male students at Hominy Public Schools already have. Hominy Public Schools historically has not provided and currently does not provide its female students with such equal access and opportunity.

44. Hominy Public Schools has intentionally violated Title IX by knowingly and deliberately discriminating against female students at Hominy Public Schools, including the daughters of Plaintiffs, by among other things, failing to provide equal opportunities for females to participate in interscholastic and other school-sponsored athletics.

45. Plaintiffs have informed Hominy Public Schools that its actions discriminate against their daughters and against all of Hominy Public Schools' female students and that these actions constitute violations of the Title IX rights of these students. Despite the fact that Plaintiffs have drawn these inequities to the attention of Hominy Public Schools, and requested relief, Hominy Public Schools has knowingly and consciously continued to fail and refuse to take any of the necessary actions to remediate any existing violations, even though the Regulations mandate that it do so.

46. On information and belief, Plaintiffs allege that Hominy Public Schools has failed to comply with each of the three (3) parts of the test for determining the equal opportunity to participate in athletics under Title IX described in Paragraph 34 above. In particular, on information and belief, Plaintiffs allege that:

- (1) The ratio of female to male athletes at Hominy Public Schools is not substantially proportionate to the overall ratio of female to male students at Hominy Public Schools.
- (2) Hominy Public Schools does not have a history or continuing practice of program expansion.
- (3) Hominy Public Schools has failed to effectively accommodate the interests of the female students.

47. Female students have historically been and continue to be underrepresented in Hominy Public Schools' interscholastic and other school-sponsored athletic programs. Despite this underrepresentation and despite the interest and abilities of the female students to participate on additional athletic teams, Hominy Public Schools has failed to accommodate this and other interests.

48. Hominy Public Schools' conduct has persisted despite the information provided and the requests made by Plaintiffs and despite the mandates of the Regulations, particularly 34 C.F.R. §§ 106.3(a) and 106.41(d).

49. Hominy Public Schools' conduct violates 20 U.S.C. § 1681 *et seq.*, as interpreted by 34 C.F.R. §§ 106.31 and 106.41 and the Policy Interpretation thereof.

50. As a result of Hominy Public Schools' conduct, the named Plaintiffs have incurred extensive damages, including, among other things, (1) the actual out-of-pocket costs incurred in paying for their daughters to participate in athletics when boys who are similarly situated would not have to pay, (2) the damages associated with their daughters' lost opportunities to participate in athletics, (3) the damages associated with their daughters' reduced opportunities to obtain

college scholarships, and (4) other damages, physical and emotional, resulting from their daughters' being subjected to discrimination and unequal treatment and benefits in athletics on the basis of gender.

SECOND CLAIM FOR RELIEF: TITLE IX

(Unequal Treatment and Benefits)

(Class action against Hominy Public Schools only)

51. Plaintiffs reallege and incorporate herein by this reference paragraphs 1 through 50 inclusive of this Complaint.

52. Hominy Public Schools, by its conduct, has intentionally violated Title IX by knowingly and deliberately discriminating against female students, including the daughters of Plaintiffs, by, among other things, failing to provide female athletes at Hominy Public Schools with the same treatment and benefits which are comparable overall to the treatment and benefits provided to male athletes.

53. Plaintiffs have informed Hominy Public Schools that its actions constitute violations of Plaintiffs' daughters' Title IX rights, as do their failure and refusal to take actions to remediate any existing violations. Despite being provided this information, Hominy Public Schools continues to refuse to remediate its violations of Title IX.

54. On information and belief, Plaintiffs allege that Hominy Public Schools has failed to comply with Title IX by failing to provide female athletes with comparable treatment and benefits including, but not limited to, the following areas:

- (1) Hominy Public Schools funds interscholastic and other school-sponsored athletics in a manner that discriminates against female athletes.
- (2) Hominy Public Schools provides male athletes with newer equipment and supplies that are of better quality than those provided to female athletes. Hominy Public Schools also provides male athletes with newer uniforms of better quality on a more frequent basis than those provided to female athletes.
- (3) Hominy Public Schools unfairly discriminates against female athletes in the scheduling of their game and practice times.
- (4) Female athletes have fewer opportunities to receive coaching because several of Hominy Public Schools' female teams have fewer coaches and more players per coach than the male teams.
- (5) Hominy Public Schools selects coaches for female athletic teams with less care and attention than for male athletic teams. As a result, the coaches of the female athletic teams often have less expertise than the coaches of the male athletic teams.
- (6) Hominy Public Schools supplies superior locker rooms, practice facilities, and competition facilities to boys as compared to girls.
- (7) The provision of medical and training facilities and services are inequitable in that the male athletes have superior access to these facilities and services, while the female athletes have very limited access to these facilities and services.

(8) Female students are discriminated against in regard to travel.

(9) Hominy Public Schools consistently provides less publicity for its female athletic teams than for its male athletic teams.

55. The gross imbalance in the treatment of female and male athletes at Hominy Public Schools, as detailed above, demonstrates Hominy Public Schools' intentional and conscious failure to comply with Title IX.

56. Hominy Public Schools' conduct has persisted despite the information provided and the requests made by Plaintiffs and despite the mandates of the Regulations, particularly 34 C.F.R. §§ 106.3(a) and 106.41(d), and the Policy Interpretation.

57. Hominy Public Schools' conduct violates 20 U.S.C. § 1681 *et seq.*, as interpreted by 34 C.F.R. §§ 106.31 and 106.41 and the Policy Interpretation thereof.

THIRD CLAIM FOR RELIEF: EQUAL PROTECTION

(Class action against all Defendants)

58. Plaintiffs reallege and incorporate herein by this reference paragraphs 1 through 57 inclusive of this Complaint.

59. Defendants, by their (1) failure to provide equal athletic opportunities for female students and (2) failure to provide female athletes with the same treatment and benefits as the male athletes (as detailed above), have purposely discriminated against female students, including the daughters of the named Plaintiffs, on the basis of gender, and have intentionally deprived them of their rights to equal protection secured by the Fourteenth Amendment to the United States Constitution.

60. Defendant Gerald Christy, as Superintendent of Schools at Hominy Public Schools, has consistently refused to sponsor additional participation opportunities for female athletes. Mr. Christy has failed and refused to remedy the unequal treatment and benefits received by Hominy Public Schools' female athletes -- despite the numerous complaints of named Plaintiffs and other parents and athletes. Therefore, Mr. Christy's actions constitute a knowing disregard for Plaintiffs' daughters' constitutional rights.

61. Section 1983 of Title 42 of the United States Code provides, in part: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

62. When Defendants engaged in the improper actions described above, they were acting under color of law for purposes of the Equal Protection Clause of the United States Constitution and 42 U.S.C. § 1983. Under this section, each of the individual Defendants is liable on an individual basis for his violation of the Plaintiffs' daughters' constitutional rights under the Fourteenth Amendment.

RELIEF REQUESTED

WHEREFORE, on each of their claims, Plaintiffs respectfully pray that this Court:

- A. Certify this action as a class action for declaratory and injunctive relief on behalf of all present and future female students at Hominy Public Schools

who participate, seek to participate, or are deterred from participating in interscholastic and/or other school-sponsored athletics at Hominy Public Schools.

- B. Enter an order declaring that Defendants have engaged in a past and continuing pattern and practice of discrimination against female students on the basis of gender in violation of Title IX and the regulations promulgated thereunder (including both unequal participation opportunities and unequal treatment and benefits), and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.
- C. Issue a permanent injunction (a) restraining Defendants and their officers, agents, employees, successors, and any other persons acting in concert with them, from continuing to maintain practices and policies of discrimination against female students on the basis of gender, and (b) requiring Defendants, immediately upon issuance of the injunctive order, to adopt and implement a budget and plan which corrects and remediates Defendants' violation of Title IX and the Fourteenth Amendment. Such a plan should include, among other things, (1) allowing female students the equal opportunity to participate in interscholastic and other school-sponsored athletics, and (2) providing female athletes with treatment and benefits comparable to those provided to male athletes.
- D. Grant an expedited hearing and ruling on the permanent injunction request in C above.

- E. Award the named Plaintiffs monetary relief as permitted by Title IX, 42 U.S.C. § 1983, and other applicable law, including but not limited to, (1) the actual out-of-pocket costs incurred in paying for equipment and supplies for their daughters to participate in interscholastic and other school-sponsored athletics which would not be incurred by parents of boys similarly situated, (2) the damages associated with their daughters' lost opportunities to play interscholastic and other school-sponsored athletics, (3) the damages associated with their daughters' reduced opportunities to obtain college athletic scholarships, and (4) other damages, physical and emotional, resulting from their being subjected to discrimination and unequal treatment and benefits in athletics on the basis of gender.
- F. Award Plaintiffs their reasonable attorneys' fees and costs pursuant to U.S.C. § 1988.
- G. Order such other and further relief as the Court deems appropriate.
- H. Designate that the trial take place before the U.S. District Court in Tulsa, Oklahoma.

Dated: 9-29-99

Respectfully submitted,

SCHILLER LAW FIRM



SAMUEL J. SCHILLER, OBA #016067

P. O. Box 159

Haskell, OK 74436

(918) 482-5942

(918) 482-1264 (Fax)

RAY YASSER, OBA #009944

3120 East 4th Place

Tulsa, OK 74104

(918) 631-2442

Attorneys for Plaintiffs